IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.11.2007

CORAM

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

H.C.P.No.1179 of 2007

Kalaiyarasi .. Petitioner

Vs.

1. The State of Tamilnadu
rep. by its Secretary
Prohibition & Excise Department
Fort St.George, Chennai-9.

2. The District Collector
and District Magistrate
Erode District
Erode. .. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue Habeas Corpus as stated therein.

For Petitioner : Mr.N.Duraisamy
For Respondents : Mr.N.R.Elango
Addl. Public Prosecutor

O R D E R

(Order of the Court was made by P.D.DINAKARAN,J.)

The second respondent herein clamped an order of detention as against the detenue - Suriya alias Kamalakannan, brother of the petitioner, as the said authority arrived at the subjective satisfaction that the said detenu is a Goonda and he has to be detained under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Officers, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982).

2.1. The order of detention dated 8.4.2007 came to be passed by the second respondent on the basis of the ground case in Crime No.168 of 2007 on the file of Kavindapadi Police Station for the offences punishable

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under Sections 392 read with 397 IPC and 25(1)(B)(a) of Indian Arms Act, complaint of which was given by one Sivaprakash. On 26.2.2007, the complainant along with his wife were on their way to Kuttaigoundenpudur from Erode at 7.30 pm in motorcycle. When they were near Angalamman Koil on the eastern side of Ayyampalayam pirivu, Kavandapadi, a Tata Sumo Car came speedily and halted, obstructing their way. Three persons got down from the car, two of them were armed and threatened to part with the jewels worn by the wife of the complainant. One accused snatched the hand bag of the wife of the complainant. The complainant and his wife raised alarm and on hearing the same, the nearby public came. The accused seeing this sped away towards Gobichettipalayam. The Inspector of Police, Kavindapadi Police Station took up the case for investigation and the detenu was arrested on 26.2.2007.

2.2. Apart from the above, the detaining authority also took note of four adverse cases pending against the detenu, viz., Crime No.513 of 2003 on the file of Pudukottai District Alangudi Police Station for the offence punishable under Section 379 IPC; Crime No.70 of 2005 on the file of Kavindapadi Police Station for the offence punishable under Section 394 IPC; Crime No.175 of 2007 on the file of Kavindapadi Police Station for the offence punishable under Section 379 IPC; and Crime No.126 of 2007 on the file of Gobichettipalayam Police Station for the offence punishable under Section 379 IPC.

2.3. The detaining authority, having satisfied that the detenu is indulging in activities which are prejudicial to maintenance of public order, passed the impugned order.

3. Challenging the said detention, the sister of the detenu has come forward with the present Habeas Corpus Petition seeking a writ of habeas corpus to direct the respondents to produce the records pertaining to the detention of the detenu, by order of detention passed by the second respondent in Cr.M.P.No.6/2007 C1, dated 8.4.2007, to set aside the same and to direct the second respondent to cause production of body and person of the detenu, who is now confined in Central Prison at Coimbatore before this Court and to set him at liberty.

4. Heard Mr.N.Duraisamy, learned counsel for the petitioner and Mr.N.R.Elango, learned Additional Public Prosecutor for the respondents.

5. The only contention advanced by the learned counsel for the petitioner is that there is considerable delay in considering the representation and the same has rendered the detention illegal.

6.1. Before delving into the issue relating to the delay as contended above, it would be apt to refer the law on the point.

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6.2. Article 22(5) of the Constitution of India suggests that the obligation of the government is to offer the detenu an opportunity of making a representation against the order, before it is confirmed according to the procedure laid down under the relevant provisions of law, vide K.M. Abdulla Kunhi v. Union of India, (1991) 1 SCC 476 .

6.3. The right to representation under Article 22(5) of the Constitution of India includes right to expeditious disposal by the State Government. Expedition is the rule and delay defeats mandate of Article 22 (5) of the Constitution of India, vide Ram Sukrya Mhatre v. R.D. Tyagi, 1992 Supp (3) SCC 65.

6.4. Any inordinate and unexplained delay on the part of the Government in considering the representation renders the detention illegal, vide Tara Chand v. State of Rajasthan, (1980) 2 SCC 321 and Raghavendra Singh v. Supdt., Distt. Jail, (1986) 1 SCC 650.

6.5. It is a constitutional obligation of the Government to consider the representation forwarded by the detenu without any delay. Though no period is prescribed by Article 22 of the Constitution for the decision to be taken on the representation, the words "as soon as may be" in clause (5) of Article 22 convey the message that the representation should be considered and disposed of at the earliest. But that does not mean that the authority is pre-empted from explaining any delay which would have occasioned in the disposal of the representation. The court can certainly consider whether the delay was occasioned due to permissible reasons or unavoidable causes. If delay was caused on account of any indifference or lapse in considering the representation, such delay will adversely affect further detention of the prisoner. In other words, it is for the authority concerned to explain the delay, if any, in disposing of the representation. It is not enough to say that the delay was very short. Even longer delay can as well be explained. So the test is not the duration or range of delay, but how it is explained by the authority concerned. Even the reason that the Minister was on tour and hence there was a delay of five days in disposing of the representation was rejected by the Apex Court holding that when the liberty of a citizen guaranteed under Article 21 of the Constitution of India is involved, the absence of the Minister at head quarters is not sufficient to justify the delay, since the file could be reached the Minister with utmost promptitude in cases involving the vitally important fundamental right of a citizen, vide Rajammal v. State of T.N., (1999) 1 SCC 417.

7. In the instant case, the impugned order of detention came to be passed on 8.4.2007. A representation was made to the Government on 20.4.2007 and the same was received by it 24.4.2007. Remarks were called for from the detaining authority on 25.4.2007 and the said representation was received on 25.4.2007 itself by the detaining authority. However,

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report was sent to the Government by the detaining authority only on 16.5.2007, viz., after a delay of 14 days, excluding 7 days public holidays. The delay in considering the representation, as indicated above, was highlighted by the learned counsel for the petitioner. There is no convincing reply on behalf of the State for the said delay. We find some force as well as substance in this contention. There is absolutely no explanation for this delay.

8. At this juncture, a reference to the decision of the Apex Court in Kundanbhai Dulabhai Sheikh v District Magistrate, Ahmedabad, (1996) 3 SCC 194 is apposite:

> "In spite of law laid down above by this Court repeatedly over the past three decades, the Executive, namely, the State Government and its officers continue to behave in their old, lethargic fashion and like all other files rusting in the Secretariat for various reasons including red-tapism, the representation made by a person deprived of his liberty, continue to be dealt with in the same fashion. The Government and its officers will not give up their habit of maintaining a consistent attitude of lethargy. So also, this Court will not hesitate in quashing the order of detention to restore the 'liberty and freedom' to the person whose detention is allowed to become bad by the Government itself on account of his representation not being disposed of at the earliest."

9. That apart, it is a settled law that there should not be supine indifference, slackness or callous attitude in considering the representation. Any unexplained delay in the disposal of representation would be a breach of the constitutional imperative and it would render the continued detention impermissible and illegal, vide K.M. Abdulla Kunhi v. Union of India, (1991) 1 SCC 476 .

The delay on fourteen days which stands unexplained would fatalise the detention attracting Article 22 of the Constitution of India and therefore, the petition must succeed and the same is ordered as prayed for. The detention order dated 8.4.2007 is set aside. The detenu is directed to be set at liberty forthwith unless his custody is required in connection with any other case.

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Sd/
Asst.Registrar

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Sub Asst.Registrar

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To:

1. The Secretary to Government
   State of Tamilnadu
   Prohibition and Excise Department
   Fort St.George, Chennai - 9.

2. The District Magistrate
   and District Collector
   Erode District
   Erode.

3. The Joint Secretary to Government,
   Public (Law and Order)
   Fort St.George, Chennai -9.

4. The Public Prosecutor
   High Court, Madras.

5. The Superintendent,
   Central Prison, Coimbatore.

1 cc To Mr.N.Duraisamy, Advocate, SR.67220.

H.C.P.No.1179 of 2007

BS(CO)
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